



MITCHELL E. DANIELS, JR., *Governor*

JAMAL L. SMITH, *Executive Director*

ICRC No.:EMra11070434

[REDACTED],
Complainant,

vs.

FAS-PAK, INC.,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred. 910 IAC 1-3-2(b)

On July 26, 2011, [REDACTED] ("Complainant") filed a complaint with the Commission against Fas-Pak, Inc., ("Respondent") alleging discrimination on the basis of race, in violation of the Indiana Civil Rights Law (IC 22-9, et seq) and [REDACTED]. Accordingly, the Commission has jurisdiction over the parties and the subject matter of this complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was not rehired after termination due to his race. In order to prevail on such a claim, Complainant must show that: (1) he is a member of a protected class; (2) he was qualified for rehire, (3) he was not rehired; and (4) employees of a different race were treated more favorably under similar circumstances.

Complainant clearly is a member of a protected class by virtue of his race. Based on Respondent's policies and past practice, it is evident that Complainant would have been qualified for rehire following his incarceration. The record indicates that Complainant was incarcerated for 10 months, and after his release he requested to be rehired to his previous position. The evidence indicates that Complainant was told that he could not be rehired directly by Respondent, but would have to go through the temporary employment company, Swanson Staffing; however, Complainant was further told that there were other temps more qualified so Complainant would not be hired. The fact is that Complainant was not rehired. The only question then is whether Respondent has treated Caucasian employees more favorably under similar circumstances. Evidence submitted by Respondent indicates that it has rehired both Caucasians and African Americans after termination for incarceration. However, this evidence indicates that Respondent has rehired two Caucasian employees directly with the company, yet the one African American that was rehired had to apply through Swanson Staffing, as Complainant was instructed. This evidence suggests disparate treatment, possibly on the basis



of race. Based upon the above findings, probable cause exists to believe that an unlawful discriminatory practice has occurred.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. IC 22-9-1-18, 910 IAC 1-3-5 The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

March 2, 2012

Date

Joshua S. Brewster, Esq.
Deputy Director
Indiana Civil Rights Commission